

1 **UNITED STATES DISTRICT COURT**  
2 **FOR THE DISTRICT OF NEW JERSEY**

3  
4 **IN RE: VALSARTAN PRODUCTS**  
5 **LIABILITY LITIGATION**

**CIVIL ACTION NUMBER:**

**19-md-02875-RBK-KMW**

6  
7 **CASE MANAGEMENT CONFERENCE**  
8 **VIA TELECONFERENCE**

9  
10 Mitchell H. Cohen Building & U.S. Courthouse  
11 4th & Cooper Streets  
12 Camden, New Jersey 08101  
13 October 27, 2021  
14 Commencing at 10:00

15 **B E F O R E:**

16 **THE HONORABLE ROBERT B. KUGLER,**  
17 **UNITED STATES DISTRICT JUDGE**  
18 **THE HONORABLE THOMAS I. VANASKIE (RET.)**  
19 **SPECIAL MASTER**

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16  
17 **ALSO PRESENT:**

18 LORETTA SMITH, ESQUIRE  
19 Judicial Law Clerk to The Honorable Robert B. Kugler  
20 Larry MacStravic, Courtroom Deputy  
21 Anna Edney, Reporter with Bloomberg News

22

23

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1 (PROCEEDINGS held via teleconference before The Honorable  
2 Robert B. Kugler, United States District Judge, and The  
3 Honorable Thomas I. Vanaskie (Ret.), Special Master, at 10:00  
4 a.m.)

5 JUDGE VANASKIE: All right. Let's get started then.

6 Who will be speaking on behalf of the plaintiffs during  
7 this call?

8 MR. SLATER: Hello, Your Honor. Adam Slater for the  
9 plaintiffs. There will be multiple people from our team that  
10 will be addressing the various issues.

11 JUDGE VANASKIE: Very well. Great.

12 Who will be the lead spokesperson for the defense?

13 MR. GOLDBERG: Your Honor, this is Seth Goldberg for  
14 the defense; and we'll also have other defense counsel speaking  
15 up today.

16 JUDGE VANASKIE: Very well. Good morning, Mr.  
17 Goldberg.

18 MR. GOLDBERG: Good morning.

19 JUDGE VANASKIE: I will ask that we follow the  
20 protocol that we've followed for these calls, and that is that  
21 unless you are speaking, please mute your phone or computer so  
22 that we're not getting any background noise.

23 All right. We'll get started then. It looks like this  
24 shouldn't take too much time today.

25 The first item I wanted to discuss was the deposition or

1 the scheduling of the deposition of Mr. Chen. The agenda  
2 letters that I received indicated that on October 25th the  
3 defense was informed that the Chinese government is denying  
4 permission for Mr. Chen to travel to Macao for purposes of  
5 having his deposition taken, but that the defense was still  
6 pursuing the matter.

7 Is there any update on this, Mr. Goldberg?

8 MR. GOLDBERG: Your Honor, since Monday evening, I do  
9 not have an update on this. As indicated in the letter that we  
10 submitted, I hope to be able to provide an update at the next  
11 conference.

12 JUDGE VANASKIE: All right. Do the plaintiffs want to  
13 be heard on this?

14 MR. SLATER: Yes, Your Honor. This is Adam Slater.

15 Your Honor, you ordered this deposition a long time ago.  
16 We asked for a deadline so that this deposition will be taken,  
17 or, for whatever reason, Mr. Chen won't appear, well, then we  
18 can go to the next step if there's a violation of a court  
19 order. But whether or not Mr. Chen is a part of the Chinese  
20 government, we've seen nothing in writing about the Chinese  
21 government's decision not to issue him a travel permit; and,  
22 frankly, that's of no moment in the United States Federal  
23 District Court proceeding. We have orders, we have rules, he  
24 needs to either appear for his deposition forthwith or we will  
25 then consider our options and make the appropriate motions if

1 he is in violation of the order.

2 So we ask for an order that he has to be deposed  
3 shortly, certainly by the middle of December.

4 And I will say there's a few things that we're still  
5 waiting for. I know Your Honor is slogging through some of  
6 those motions but that should give plenty of time for the  
7 Maggie Kong production to be made to us, which, I'm not sure if  
8 Your Honor's aware, we still have never gotten that even though  
9 Your Honor told the defense on the record that was going to be  
10 produced.

11 So we have a right to depose this person, you've already  
12 ordered it and we would ask for a date certain so that it must  
13 be done by December 15th; and if he's not produced by then,  
14 then we can go to the next step.

15 MR. GOLDBERG: Your Honor, if I may, this is Seth  
16 Goldberg.

17 JUDGE VANASKIE: Yes, Mr. Goldberg.

18 MR. GOLDBERG: I would respectfully request that Your  
19 Honor not issue a deadline for the deposition. I think there  
20 are a few things that are important with respect to that  
21 request.

22 You know, one, our client is trying to work through the  
23 issue with the Chinese government. And there are multiple  
24 levels of government at issue. We have local government, we  
25 have national government and it takes time, just like it would

1 take time in dealing with the local and federal government in  
2 the U.S.

3 Two, there's no prejudice to plaintiffs in having to  
4 wait so that we can sort through this. There's nothing on the  
5 Court's calendar that requires this deposition with any urgency  
6 at all. In fact, all of the fact discovery and all of the  
7 expert discovery is now complete, so there would be no  
8 prejudice in allowing the ZHP parties the time to navigate this  
9 issue. And we will work through it, we will provide an update  
10 to the Court next month and, hopefully, we'll have more  
11 information then.

12 JUDGE VANASKIE: Well, I find that setting deadlines  
13 is usually helpful in moving matters along. And so I am going  
14 to grant the plaintiffs' request that the deposition of  
15 Mr. Chen be taken by December 15. That's another six weeks  
16 away. I believe that does give you adequate time.

17 You can report to your counterparts in China that the  
18 Court has ordered that the deposition be taken by December 15th  
19 so that they understand that there is a deadline in place and  
20 hopefully this deadline can be accommodated.

21 Now, having said that, Mr. Goldberg, I will issue the  
22 order that his deposition be taken by December 15th but if  
23 there's some need for additional time, I'll certainly be open  
24 to considering the request; but I think it's important right  
25 now that we do set a deadline. We've let this matter kind of

1 meander for a bit of time now, and all we have right now is an  
2 understanding that there's been a verbal denial of permission  
3 to travel, nothing in writing, and I think we need to move it  
4 along.

5 So I don't think that's an unreasonable request on the  
6 part of the plaintiffs. It's not asking for the deposition  
7 next week. So I will issue an order to that effect.

8 All right. The next item I wanted to address is the  
9 update on the newly named, I'll call them newly named -- having  
10 trouble getting that out -- plaintiffs' class representatives.

11 My understanding is that there are still some  
12 Plaintiffs' Fact Sheets that are incomplete.

13 Has that moved forward at all, the Plaintiffs' Fact  
14 Sheets? In other words, where do we stand on being able to get  
15 these depositions completed? I think we set a deadline of  
16 December 3rd. Am I wrong on that, Mr. Slater?

17 MR. SLATER: Your Honor, I think someone else on our  
18 side is going to answer that question who's been more close to  
19 the depositions on these specific cases and the specific  
20 plaintiffs.

21 JUDGE VANASKIE: Very well.

22 MR. STANOCH: Good morning, Your Honor. David Stanoch  
23 for the plaintiffs. I can address your issue.

24 The short answer, Your Honor, is yes, we're working to  
25 make sure all of the fact sheet information is provided and

1 that it's materially complete and that the depositions are  
2 scheduled.

3 I think fact sheets and attendant documents have been  
4 submitted for all of these "new named" plaintiffs. As  
5 so-called deficiencies come up, we're dealing with them  
6 immediately with the defense counsel who reach out to us.

7 In our view, a number of the so-called deficiencies are  
8 nonmaterial or things that do not affect substantial completion  
9 or deposition. We're talking about things like, oh, well, you  
10 left the question blank and the answer was really N/A, not  
11 applicable, could you fix that; or you gave us the required  
12 blank authorizations, but now this provider requires you to  
13 sign their own specific authorization.

14 We're working through that and we're doing it and we're  
15 going to get back to them as fast as we can and we don't think  
16 the depositions are going to be a problem. Most, if not all,  
17 are scheduled and if there are a couple of stragglers because  
18 the defendants don't believe they have records from third  
19 parties, we'll work with them and we'll figure it out and get  
20 all these people deposed, Judge.

21 JUDGE VANASKIE: All right, very well.

22 Who's addressing this issue for the defense?

23 MS. LOCKARD: Hi, Judge. It's Victoria Lockard from  
24 Greenberg Traurig on behalf of the defense and the Teva  
25 defendants.

1 I don't think we necessarily have a bone to pick today  
2 with plaintiffs over this. You know, I'd agree the parties are  
3 working together but we do want to just flag the issue. You  
4 know, if we don't get substantially complete Plaintiff Fact  
5 Sheets, including the correct authorizations, then we can't get  
6 the records for these plaintiffs, which may impact the ability  
7 to take the deposition.

8 I don't think we're there yet. We're all working  
9 together with the goal of trying to complete these, I think it  
10 can be done, but we'll just continue to update the Court. If  
11 it becomes a problem, we'll let you -- let you know.

12 JUDGE VANASKIE: All right, very well. Thank you.

13 I did want to ask, are you happy in Atlanta today? Are  
14 you in Atlanta, Victoria?

15 MS. LOCKARD: Yes, let's go, Bravos. Thank you for  
16 acknowledging it. It's been a long time coming for us here.  
17 Sorry for all you Mets fans or Astros.

18 JUDGE VANASKIE: I'm a Phillies fan. I was  
19 disappointed lots of times by the Braves.

20 All right. The next item I wanted to address was an  
21 update on the bellwether plaintiffs and treater depositions.  
22 I'm a little confused, having read the agenda letters for  
23 today, in terms of how many depositions still need to be taken.

24 And the letter from the defense was helpful because it  
25 identified by name of bellwether plaintiff depositions that

1 still need to be taken.

2 So let me talk to the defense first. Let me ask, where  
3 do we stand with respect to these bellwether depositions,  
4 either of the bellwether plaintiffs or their physicians?

5 MS. LOCKARD: Yes, it's Victoria Lockard again.

6 So on the plaintiff bellwethers themselves, all but one  
7 deposition has been taken or is scheduled to take place by the  
8 deadline. The only outstanding is in the Ochs case because of  
9 a medical condition of the plaintiff, and there's been  
10 discussions over substituting the anticipated estate  
11 representative. We've agreed with plaintiffs to take that  
12 deposition on November 19th. So it is scheduled shortly after  
13 the deadline. And, you know, so that shouldn't be a problem as  
14 long as we get the Court's blessing to do that. As we said in  
15 the past, we want to make sure we're not reaching side  
16 agreements without the Court's knowledge; but I think that  
17 should be able to proceed with no problem on the 19th.

18 JUDGE VANASKIE: All right.

19 MS. LOCKARD: Would you like me to go on to the  
20 treaters?

21 JUDGE VANASKIE: Yes, let's go on to the treaters  
22 then.

23 MS. LOCKARD: Okay. So on the treaters, so, of  
24 course, there are two cases, Garcia and Crawford, that Your  
25 Honor previously granted leave to take outside of the

1 deposition deadline and those were Marlene Goldenberg's cases.  
2 So I think that's taken care of. But then by our count, we  
3 have six cases in addition where the physicians cannot take --  
4 cannot provide dates prior to the deposition cutoff next week  
5 or where we're working to try to get those scheduled and we're  
6 unclear whether or not they will be able to be deposed by the  
7 deadline. And maybe plaintiffs have information on one or more  
8 that I don't have as I sit here, but those are in the Ochs,  
9 O-C-H-S, Ramirez, Fields, Svebeck, Hanna and Welch cases.

10 JUDGE VANASKIE: S-V-E-B-E-K?

11 MS. LOCKARD: Yes, S-V-E-B-E-C-K, I believe.

12 JUDGE VANASKIE: Okay.

13 MS. LOCKARD: So three of those are set in November,  
14 and then the remaining three, by our count, we -- yeah, the  
15 remaining three we need to confirm with the treater deposition  
16 dates. At least one of those could not provide dates before  
17 November 18th. So, again, I don't think this is through any  
18 fault of any of the parties necessarily, and I do believe we  
19 are all working together to get these scheduled, but in some  
20 cases, just extenuating circumstances scheduling with the  
21 treaters' practices are preventing that from happening. But if  
22 we could get approval to move forward with those in November, I  
23 think we should be able to get those knocked out within the  
24 next month.

25 JUDGE VANASKIE: All right. And who will be

1 addressing this matter for the plaintiffs?

2 MS. BOLDT: Your Honor, this is Paige Boldt for the  
3 plaintiffs.

4 THE COURT: All right.

5 MS. BOLDT: Your Honor, I agree with Ms. Lockard that  
6 we have a handful of case-by-case-specific issues that I think  
7 the parties are amicably trying to resolve, as long as we're  
8 able to. And it looks like everything should be on track to  
9 complete by the end of November, based off of kind of what  
10 we're hearing for these individual doctors and make sure our  
11 schedules work out.

12 JUDGE VANASKIE: Okay. And if you require an order  
13 from me with respect to completing these depositions by the end  
14 of November, just confer and submit to me an agreed-upon order.  
15 You certainly have the permission to do so. You've worked  
16 diligently to get these matters concluded, and it seems like  
17 there's good cooperation in moving forward to get this done.  
18 And I'll let that to you to confer whether you want the benefit  
19 of an order, the protection of an order, to take these  
20 depositions. And if that's what you decide, submit it to me  
21 and we'll promptly have it entered.

22 MS. LOCKARD: Thank you, Judge.

23 MS. BOLDT: Thank you, Your Honor.

24 MS. LOCKARD: If I may, Your Honor, it's Victoria  
25 Lockard again.

1                   The only other statement I wanted to just make in  
2 response is, in plaintiffs' submission, you know, they  
3 initiated the discussion by saying the parties had agreed to  
4 take two depositions for each bellwether plaintiff, and I just  
5 need to correct the record that defendants have not agreed to  
6 that. We argued this before Judge Kugler. We did not agree to  
7 that.

8                   Judge Kugler ordered that the parties proceed with two  
9 treaters per bellwether plaintiff and that defendants or  
10 plaintiffs, if conditions warranted and for good cause, we  
11 could certainly come back and request additional depositions of  
12 the treaters. And in many cases that will certainly happen  
13 between now and trial.

14                  I just want to make the record clear on that, that we're  
15 not -- we have not agreed and do not agree that this will be  
16 the end of the treater depositions and we do intend to present  
17 good cause for taking additional ones.

18                  JUDGE VANASKIE: All right. I do recall that  
19 conversation with Judge Kugler and the decision that he made on  
20 that matter, and I believe you are correct that you can come  
21 back in and seek leave to take more than two physician  
22 depositions per bellwether plaintiff. So your record has been  
23 made and we'll proceed from there.

24                  MS. LOCKARD: Thank you.

25                  JUDGE VANASKIE: All right. The next issue deals with

1 the deadline for, I take it, moving for class certification.  
2 And who will be addressing this issue on behalf of the  
3 plaintiffs?

4 MS. WHITELEY: I will, Your Honor. This is Conlee  
5 Whiteley.

6 JUDGE VANASKIE: All right.

7 MS. WHITELEY: Your Honor, we did ask defendants about  
8 this yesterday and they did not have a chance to respond and so  
9 we do not know if we have agreement yet, so we would like to  
10 hear about that. But, basically, our request is to bump all  
11 the dates back that go through May by one week.

12 And the reason for that, I mean, I think the Court is  
13 well aware of the schedule, but we have the modifications to  
14 the report and recommendation. If any party plans to file a  
15 request for modification, I believe that's due tomorrow, on the  
16 28th.

17 There is a discrepancy in when the order was signed and  
18 filed by the 28th or the 29th, so I guess we'd like to get some  
19 clarity on that for all the parties.

20 But beyond that, the amended complaints are due on  
21 November 1st, the *Daubert* motions are due on November 1st, and  
22 then the motion for the class certification is due on November  
23 3rd. And just given the back-to-back dates, the plaintiffs  
24 could use a little bit more time to have it fully organized  
25 because there are a lot of moving pieces.

1                   JUDGE VANASKIE: All right. And who will be  
2 addressing this issue for the defense?

3                   MS. LOCKARD: Your Honor, it's Victoria Lockard again  
4 for the defense.

5                   We received this request yesterday afternoon and have  
6 not had a chance to speak fully to all of the defendants, but  
7 in discussing this, our position is this: You know, these  
8 dates have been in place since February of this year. Judge  
9 Kugler issued CMO 23. We're talking about the entire back-half  
10 of the CMO schedule, nine deadlines. This is not just one  
11 briefing deadline, it's nine deadlines that they would be  
12 seeking: All class cert expert reports, all class cert  
13 briefing, all class cert *Daubert* 702 motions.

14                  And so it is a -- you know, whereas I understand it's a  
15 tight schedule, everyone knew that going in. Initially, we  
16 wanted to push -- the defendants wanted to push out class  
17 certification for that reason and the plaintiffs rejected it.  
18 Mr. Honik fought vehemently to keep class cert up front and  
19 early. So, you know, now here we are a week before the  
20 deadlines drop and plaintiffs are wanting to move them.

21                  So, I mean, we're not in a position where we think these  
22 need to be moved. Everybody was aware of these. Judge Kugler  
23 has said, you know, get your resources together, it's going to  
24 be a lot of work, get your lawyers lined up, and we all knew  
25 this going in. So we don't want to, you know, seem

1 uncooperative. We haven't been presented with any good-faith  
2 reason to move these deadlines that have been in place since  
3 February.

4 That said, if the Court's inclined to give relief on  
5 this, we do think all nine of those deadlines need to be pushed  
6 back by the same amount in order to keep us on the same cadence  
7 that Judge Kugler ordered.

8 JUDGE VANASKIE: And so to be clear, the request is to  
9 move the deadline for the class certification motion one week,  
10 and then move all other deadlines by one week. Am I correct in  
11 understanding that?

12 MS. WHITELEY: Yes, Your Honor. So the end date would  
13 be May 25th instead of May 18th for the last deadline related  
14 to this.

15 JUDGE VANASKIE: All right.

16 MS. WHITELEY: Again, this is Conlee Whiteley  
17 responding.

18 Much of what Ms. Lockard says is very true. We were  
19 vehement about the schedule, but, you know, some of the  
20 things -- and as it turns out, just everything that has to be  
21 filed within basically a seven-day period, some of that was not  
22 anticipated and so we don't think asking for another week  
23 really jars the schedule to any extent. There's certainly no  
24 prejudice. And I imagine there's a couple of these dates that,  
25 if moved out, will benefit the defendants a bit, particularly

1 the January 5th deadline.

2 JUDGE VANASKIE: All right. What I'd like to do is  
3 confer with Judge Kugler on this, he set the schedule in place,  
4 and be guided by his judgment in terms of moving all of these  
5 deadlines by one week.

6 I certainly understand the basis for it. You are  
7 correct, Ms. Whiteley, to point out that you've got some moving  
8 deadlines now as a result of intervening rulings, so I  
9 certainly am sympathetic to what you're facing right now in  
10 terms of the immediate deadlines.

11 But let me confer with Judge Kugler on this and we'll  
12 issue an order promptly.

13 MS. WHITELEY: Okay. Thank you, Your Honor.

14 JUDGE VANASKIE: All right?

15 Now, I did want to talk about a couple of the other --  
16 this is not on the agenda but, you are correct, you did raise  
17 the question about Special Master Order 46, which implemented  
18 the recommendations of the report dealing with the motion for  
19 leave to amend the Master Complaints and there appears to be --  
20 I know I dated it October 7th but it may not have been docketed  
21 until October 8th.

22 MS. WHITELEY: Yes, Your Honor. This is Conlee  
23 Whiteley.

24 JUDGE VANASKIE: Okay. And so you want clarification  
25 on whether your deadline is tomorrow or Friday, I take it?

1 MS. WHITELEY: Yes. I think that applies to any party  
2 that would, you know, be filing something. So we would like to  
3 have all the parties be on the same page in that regard.

4 JUDGE VANASKIE: Sure. Does anybody want to address  
5 this for the defense?

6 (No response).

7 JUDGE VANASKIE: All right. Not hearing anything,  
8 yes, I think it would be fair to give you until Friday. You  
9 get the benefit of the full 21-day period that way. So that  
10 the deadline for filing, as I understand it, objections would  
11 be Friday, October 29th, or to seek modification of the order  
12 and the accompanying report.

13 Now, having said that, and I know you're not obligated  
14 to inform us of this, but is anybody planning on filing  
15 modifications or objections to that report and order?

16 I'll ask from the plaintiffs' perspective first.  
17 Anybody addressing this for the plaintiffs? If you say you're  
18 not in a position because you haven't made a decision yet, I  
19 certainly understand that.

20 MR. STANOCH: Your Honor, this is David Stanoch for  
21 plaintiffs.

22 I think the answer is we're not sure yet. We may not do  
23 anything at all but I can't say for certain.

24 JUDGE VANASKIE: Okay. And on the defense side, Mr.  
25 Goldberg, or do you have a spokesperson on this?

1                   MR. GOLDBERG: Yes, Your Honor. I do expect that the  
2 defendants will be filing something, whether it's a part of the  
3 report and recommendation, but I do expect we will be filing  
4 something.

5                   JUDGE VANASKIE: All right. The reason why I'm asking  
6 that is that I did set a fairly tight deadline for the Amended  
7 Master Complaints to be filed, and that is November 1st, which  
8 is Monday. And so if objections are filed on Friday, what  
9 should be done with respect to that November 1st deadline?

10                  I'll ask first for the defense to comment.

11                  MR. GOLDBERG: Your Honor, this is Seth Goldberg.

12                  You know, I hadn't really anticipated your asking me  
13 that question, and I'd want to confer with my colleagues who  
14 are really closer to this issue about the timing on the filing  
15 of the motion -- of the amended complaint.

16                  JUDGE VANASKIE: All right. Mr. Slater, is anybody on  
17 your side prepared to address this? Have you thought about  
18 that?

19                  MR. SLATER: Your Honor, I think our -- this is Adam  
20 Slater, for the record.

21                  I think that our assumption was that we would go ahead  
22 and file it, because that's what Your Honor ordered, and then  
23 to the extent that there's any appeal to Judge Kugler from your  
24 R and R, I suppose that can be addressed at a later stage.

25                  I don't know if anyone on my side disagrees, but that

1 was our working assumption, that we were going to file this  
2 regardless of what challenges may be filed because we have to  
3 have something on file, and we figured we would comply and then  
4 if something needed to be modified later, that could be done at  
5 a later date.

6 JUDGE VANASKIE: Well, I am relieved to hear that.  
7 That's what I anticipated. So I think that makes the most  
8 sense to get those Amended Master Complaints in so we can get  
9 closer to finalizing the pleadings from the plaintiffs' -- on  
10 the plaintiffs' side here; and if objections come in, well,  
11 then, they'll be addressed as part of Judge Kugler's rulings.  
12 And if there has to be some adjustment about what can be filed  
13 and what cannot be filed, well, it would occur after Judge  
14 Kugler has a chance to address the matter. So let's proceed on  
15 that basis.

16 The other thing I wanted to address, again, not part of  
17 the agenda letters, is the Special Master Order I issued with  
18 respect to the request to confirm waiver of confidentiality.

19 I've asked that you all meet and confer with respect to  
20 the confidentiality designations, and I also have a brief that  
21 is due tomorrow -- or Friday, I'm sorry, on behalf of the ZHP  
22 parties dealing with this July 27, 2017, email.

23 I'm not going to get into any substance here. But my  
24 point that I wanted to make today is that I think these are  
25 issues that you should be able to resolve. And I'm not talking

1 about agreeing that there was a waiver. I think these are  
2 issues that you can agree whether certain items should be  
3 maintained as confidential and certain items should not be  
4 maintained as confidential.

5 So I ask that you take that directive that you meet and  
6 confer with respect to these confidentiality designations very  
7 seriously and see really what you can agree to.

8 Having to resolve whether something should be  
9 confidential or not is not a welcome task, I'll put it that  
10 way, but one I understand has to be done and will be done. But  
11 if you can peek through these things very carefully and come to  
12 some agreement, I think that would be great. I think both  
13 sides have to have an open mind in undertaking these  
14 discussions and go from there.

15 All right. Is there anything --

16 MR. GOLDBERG: Your Honor?

17 JUDGE VANASKIE: Yes, go ahead. Let's hear from  
18 plaintiffs first.

19 MR. SLATER: Your Honor, it's Adam Slater.

20 I don't think there's any response that we have to that.  
21 We, obviously, will take into account what Your Honor just said  
22 and we will look forward to talking to the defense and seeing  
23 what their positions are.

24 I can't say I'm fully optimistic that we're going to  
25 reach agreement on everything, but certainly your guidance is

1 understood.

2 JUDGE VANASKIE: Yes, I'm hoping, from the plaintiffs'  
3 perspective, or speaking to you as the plaintiffs' counsel, and  
4 speaking to all plaintiffs' counsel, that you just don't rely  
5 upon the assertion about -- and this is, it's a very important  
6 matter and it does involve public health and safety, I  
7 understand that; but I hope there's a little more meaningful  
8 discussion or much more meaningful discussion than simply  
9 making that assertion.

10 Let's hear from the defense.

11 MR. GOLDBERG: Your Honor --

12 MS. LOCKARD: Yes, Your Honor --

13 MR. GOLDBERG: Your Honor, this is Seth Goldberg.

14 We certainly hear Your Honor and we'll work with  
15 plaintiffs to try to resolve these issues without having the  
16 Court have to do it for us.

17 I had spoken up a second ago, I jumped the gun because  
18 there was one more issue that we wanted to raise with Your  
19 Honor.

20 JUDGE VANASKIE: All right. What is that issue, Mr.  
21 Goldberg?

22 MR. GOLDBERG: Your Honor, this has to do with the  
23 Rule 702 motions that the defendants will be filing to exclude  
24 the plaintiffs' experts on general causation. Those motions  
25 are due on November 1st. The defendants will be filing five

1 separate motions, one for each of the experts. And under the  
2 rules, we would get I believe it's 40 pages per brief for a  
3 total of 200 pages of briefing.

4 We had proposed to plaintiffs yesterday and requested  
5 that they consent to our having an additional ten pages for one  
6 of the briefs so that we can use that brief for an expanded  
7 discussion of facts and law that are common to all of the other  
8 briefs, and we would then, in those other briefs, incorporate  
9 by reference or refer to that expanded discussion of facts and  
10 law, which would allow us to streamline the briefing for the  
11 Court and actually file shorter briefs by way of that  
12 cross-referencing; and that, in our estimation, we think it's  
13 very likely that by doing so, we would have a total of less  
14 than 200 pages of briefing.

15 Plaintiffs, unfortunately, did not agree to allowing us  
16 to have that ten additional pages, and their view was that it's  
17 too late to make that request, even though this isn't being  
18 filed until November 1; and also that they would have done  
19 something similar, I suppose, or that somehow they felt the  
20 parties should have the same approach.

21 Of course, you know, how the parties decide to file  
22 their briefs is really an independent determination. They  
23 could have chosen to file no *Daubert* briefs, file all of them,  
24 or have different page limits or different requests as to  
25 pages. We don't see how there can be any complaint here since

1 the total number of pages will be less than 200.

2 And so we would ask Your Honor to grant our request to  
3 have ten additional pages for one of our Rule 702 briefs.

4 JUDGE VANASKIE: And have you decided, Mr. Goldberg,  
5 which brief that would be?

6 MR. GOLDBERG: Well, we haven't yet. You know, we  
7 have -- we think it's likely to be related to an expert by the  
8 name of Hecht, H-E-C-H-T, only because the issues related to  
9 his report are a little more straightforward and so we can put  
10 the expanded facts and law section nicely into that brief and  
11 the other briefs, again, will cross-reference to that expanded  
12 facts and law section, which we think makes a lot of sense for  
13 the Court, rather than hear the same facts and law in five  
14 different briefs.

15 JUDGE VANASKIE: All right. Mr. Slater, are you  
16 addressing this?

17 MR. SLATER: Yes, I am, Your Honor.

18 Weeks and weeks ago, the defense reached out to us and  
19 said they wanted to discuss something about the briefing on  
20 *Daubert*. We said, what's the issue, when do you want to talk,  
21 and then they dropped the issue.

22 We're filing *Daubert* briefs I believe against every  
23 single one of their experts, which I believe is about eight  
24 experts, and our briefs are, obviously, well along, because  
25 we've been working on these for quite awhile, and written

1 pursuant to the rules and pursuant to what we're supposed to  
2 do, which is file a separate brief against each expert.

3 To now say, days before the brief is due, that the  
4 defense wants to change the paradigm to something that would be  
5 very favorable to anybody if we knew long in advance that we're  
6 going to be able to put some common legal argument and common  
7 factual discussion in one brief and not have to repeat it  
8 across the board, that would have been nice to know, but it's  
9 too late for us to do that now. It would take so much work to  
10 re-engineer, we can't do it.

11 Counsel has pointed out 40 pages, I think it's 40 pages  
12 of certain type of font and 30 pages of a different type of  
13 font; in any event, those pages are more than sufficient to  
14 address each expert. There's been no showing that there's a  
15 need for more pages.

16 Again, this would have to be done in an equitable way  
17 with enough notice that both sides could take advantage of this  
18 type of a modification, and we're not in a position to do so at  
19 this point.

20 So we'd just ask that -- I mean, these are affirmative  
21 briefs, which the same rules apply to both sides, we just are  
22 limited to the rule -- to the page limit set forth by the local  
23 rules and, certainly, we're not hearing that there's not enough  
24 room in any of these briefs to fit this in. We're not being  
25 told by the defense that without this common ten pages, they

1 can't fit what they need to fit into the briefs; it's just a  
2 matter of just trying to, for their own convenience; but we're  
3 not able to do that. So I don't think it would be equitable at  
4 this point to modify the briefing days before it's due when  
5 both sides are subject to the same rules and the same deadline.

6 MR. GOLDBERG: Your Honor, this is Seth Goldberg, if I  
7 may.

8 There's no rule that the format of one side's brief  
9 needs to be the same as the formatting of the other. There is  
10 a page limit, it's 40 pages for the font that we're using, and  
11 if plaintiffs wanted to do this, they could have done this.  
12 They didn't have to bring it to our attention. We're -- we're  
13 simply asking for their consent to the ten pages but,  
14 certainly, Your Honor could grant the request if they're not  
15 going to.

16 And, in fact, in any of these briefs that we file, the  
17 likelihood of having this expanded facts and law section in the  
18 brief and not exceed that 40-page limit is why we're making the  
19 request, because in order to have that discussion, we will need  
20 a few additional pages.

21 We're now at that point where we're finalizing all of  
22 these briefs. Of course, this isn't something we could have  
23 raised sooner. And we're -- we've organized this in a way  
24 that's going to be more efficient for the Court and we don't  
25 really see how -- why plaintiffs would be challenging this.

1           And we'd ask Your Honor to grant that request for the  
2 ten additional pages for one of our briefs, knowing that the  
3 total amount of pages will still be under the 200 that we would  
4 be permitted for all five briefs.

5           JUDGE VANASKIE: All right. Thank you.

6           Yes, I will grant that request. I would ask for  
7 submission of a proposed order that grants that request and  
8 specific as to which brief will be expanded by ten pages.

9           In other words, as I understand the request, you're  
10 asking that one of the briefs be allowed to reach up to 50  
11 pages.

12           MR. GOLDBERG: Correct, Your Honor.

13           JUDGE VANASKIE: And what I would ask, so that it's  
14 clear on the record, you submit to me a proposed order that  
15 grants that request. The order should provide that the  
16 limitation is expanded only for that one brief and in all other  
17 respects, the page limits that have been imposed here remain  
18 the same.

19           Now, I know it's too late, Mr. Slater, for you to adjust  
20 how your briefs are constructed, but if you wanted to extend by  
21 ten pages the length of one brief, well, you'd be granted that  
22 request. All right?

23           MR. SLATER: Thank you, Judge. And it's understood.

24           Just one clarification. Defense counsel said that this  
25 will not change the total amount of pages that they're going to

1 use, which I guess would be 200 pages. So I'd just appreciate  
2 that that would also be in the order. So the Hecht brief, if  
3 that's the one they choose to append the extra ten pages on,  
4 can be 50, but, accordingly, still, the total would be 200.  
5 That's what Mr. Goldberg represented.

6 JUDGE VANASKIE: Is that agreeable, Mr. Goldberg?

7 MR. GOLDBERG: Your Honor, we have no objection to  
8 that. We've got, you know, four, we've got page limits for  
9 each of these briefs and we appreciate Your Honor extending the  
10 one brief by ten pages.

11 JUDGE VANASKIE: All right. So in the order that you  
12 send to me, Mr. Goldberg, please specify that the aggregate  
13 number of pages of the briefs will not exceed 200. Okay?

14 MR. GOLDBERG: Will do, Your Honor. Thank you.

15 JUDGE VANASKIE: Thank you.

16 All right. Is there anything else before we get Judge  
17 Kugler on the phone?

18 MR. GOLDBERG: Nothing from the defense.

19 MR. SLATER: Nothing from plaintiffs.

20 JUDGE VANASKIE: All right. Very well.

21 I am going to hang up now, place a call to Judge Kugler  
22 and rejoin you all in a few minutes.

23 Thank you all very much.

24 MR. GOLDBERG: Thank you.

25 MR. SLATER: Thanks.

1 (Brief recess taken from 10:44 a.m. until 10:48 a.m.)

2 JUDGE KUGLER: Good morning. It's Judge Kugler. I  
3 assume that Camille, the court reporter, is on.

4 Camille, are you on?

5 THE COURT REPORTER: Yes. Good morning, Judge.

6 JUDGE KUGLER: Good morning.

7 Is Judge Vanaskie back on the call yet?

8 JUDGE VANASKIE: Yes, I am on the call.

9 JUDGE KUGLER: Okay, great.

10 How is everybody doing?

11 MR. SLATER: Well, Your Honor. How are you?

12 MR. GOLDBERG: Good morning, Your Honor.

13 MS. LOCKARD: Good morning, Your Honor.

14 JUDGE KUGLER: Other than being a Philadelphia Eagles  
15 fan, I'm doing fine.

16 MR. SLATER: Some of us are in the same boat.

17 JUDGE KUGLER: There's always next year, right? Well,  
18 you Jets fans and people like that know what I'm talking about.

19 Anyway, I don't see there's a whole lot for me to do  
20 today.

21 There's three orders to show cause that were returnable  
22 in the Landau, Rice and Phillips cases, but those are resolved  
23 so we can dismiss those orders to show cause, correct?

24 MR. HARKINS: Good morning, Your Honor. This is Steve  
25 Harkins with Greenberg Traurig for the defendants.

1 That is correct, we can dismiss all three of the orders  
2 to show cause currently pending.

3 JUDGE KUGLER: Mr. Harkins, you are seeking an order  
4 to show cause in the Denton, Martinez and Johnston matters.

5 Any update on those?

6 MR. HARKINS: No updates from the defense, Your Honor.  
7 We would request orders to show cause in those three cases  
8 returnable at the November CMC.

9 JUDGE KUGLER: Any response from any of the  
10 plaintiffs' counsel on these three?

11 MS. GOLDENBERG: Your Honor, this is Marlene  
12 Goldenberg on behalf of the plaintiffs. I don't know if the  
13 individual attorneys are on the call.

14 I'll just note that in the list of deficiencies that we  
15 received from defense counsel earlier in the week, we did  
16 notice that a number of them pertain to cases that were solely  
17 losartan or irbesartan cases, and we have tried to catch those  
18 between the individual plaintiff's counsel and defense counsel  
19 to make sure that those were taken off the list; and I'll just  
20 ask that defense counsel confirm that none of these three fall  
21 into that category. Beyond that, I don't have specific  
22 information on these three cases.

23 JUDGE KUGLER: Mr. Harkins.

24 MR. HARKINS: Your Honor, I can confirm for the three  
25 cases where we are requesting an order to show cause, none of

1 those fall in that category. We will certainly make sure to  
2 remove any offending cases from the first listings going  
3 forward.

4 JUDGE KUGLER: All right. Denton, Martinez and  
5 Johnston will be listed returnable at the next conference order  
6 to show cause why they should not be dismissed for failure to  
7 comply with discovery requirements.

8 And then there are 18 you seek a listing for, Mr.  
9 Harkins. Any update on those?

10 MR. HARKINS: No updates from the defendants on these  
11 18. We would ask that they be carried forward to the next  
12 agenda.

13 JUDGE KUGLER: Any response from the plaintiffs' side  
14 on any of these 18? All we're doing is just re-listing them in  
15 a month.

16 (No response).

17 JUDGE KUGLER: Okay. Those 18, which are McLean,  
18 Louissaint, L-O-U-I-S-S-A-I-N-T, Bourne, B-O-U-R-N-E, hyphen  
19 Boateng, B-O-A-T-E-N-G, Hinrichs, H-I-N-R-I-C-H-S, Craigie,  
20 C-R-A-I-G-I-E, Cahall, C-A-H-A-L-L, another Johnston, Andre,  
21 A-N-D-R-E, Fatigato, F-A-T-I-G-A-T-O, Dickinson, Vaughn, Kelly,  
22 Chacon, C-H-A-C-O-N, Patrick, McVeigh, M-C-V-E-I-G-H, Jordan,  
23 Harris, Knowles, they will all be listed next time.

24 Is there anything else you need me to do today from any  
25 side?

1 MS. GOLDENBERG: Your Honor, this is Marlene  
2 Goldenberg for the plaintiffs.

3 I did want to flag for you, and believe David Rheingold  
4 is on the call this morning, he had the case that was dismissed  
5 I believe at the prior CMC, and there was that issue and you  
6 had indicated to him that he could file a motion if he believed  
7 that the issue had been cured.

8 To the best of my knowledge, his motion is on file. I  
9 think he's here and prepared to address it if you wanted to  
10 talk about it today.

11 JUDGE KUGLER: Okay. Which case is it?

12 MR. RHEINGOLD: This is David Rheingold, I'm  
13 appearing, and it's the Lloyd case.

14 JUDGE KUGLER: What's the plaintiff's first name?

15 MR. RHEINGOLD: Let me get that name. Thomas Lloyd.

16 JUDGE KUGLER: Who's the lead defendant in your case?

17 MR. RHEINGOLD: Mr. Harkins I've been talking with,  
18 with regard to the deficiency, most recently.

19 MR. HARKINS: Your Honor, this is Steve Harkins for  
20 the defendants.

21 We have reviewed the PFS that was submitted in  
22 connection with this motion. We can inform the Court that it's  
23 our position the fact sheet is now substantially complete and  
24 we have no opposition to the motion.

25 JUDGE KUGLER: All right. The order of dismissal will

1 be vacated. It will be reinstated.

2 MR. RHEINGOLD: Thank you. And I appreciate  
3 everyone's cooperation on this.

4 JUDGE KUGLER: Anything else you want to talk about  
5 today?

6 (No response).

7 JUDGE KUGLER: All right. Well, let me raise an  
8 issue, it's in the back of my mind. I don't want any response;  
9 I don't need any response. But we've all seen the J&J  
10 bankruptcy. It perhaps brought that MDL mass tort case to a  
11 halt. That seems to be in vogue these days in these mass tort  
12 cases, the defendants entering bankruptcy.

13 I don't have any inside information on our case, but I  
14 think it's not too early to start giving some thought to what  
15 might happen if one of the defendants in this case goes that  
16 route. So, anyway, we'll see what happens, hopefully.

17 And if there is nothing else, we'll talk to you in a  
18 month. Good luck. Thanks, everybody. Take care.

19 MR. HARKINS: Thank you.

20 MR. SLATER: Thank you, Your Honor.

21 (The proceedings concluded at 10:55 a.m.)

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1 I certify that the foregoing is a correct transcript  
2 from the record of proceedings in the above-entitled matter.

3

4 /S/ Camille Pedano, CCR, RMR, CRR, CRC, RPR  
5 Court Reporter/Transcriber

6 October 28, 2021

7 Date

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